

HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,)
) Case No. 2:21-cv-00169-RSL
Plaintiff,)
) STIPULATION AND ORDER
v.)
)
WASHINGTON DEPARTMENT OF FISH &)
WILDLIFE, et al.,)
)
Defendants.)
_____)

WHEREAS, Plaintiff Wild Fish Conservancy (“Conservancy”) issued a 60-day pre-suit notice letter dated December 2, 2020 and filed the complaint in this matter on February 10, 2021, against Defendants the Washington Department of Fish and Wildlife, Director Kelly Susewind, in his official capacity as the Director of the Washington Department of Fish and Wildlife, and Commissioners Larry Carpenter, Barbara Baker, James Anderson, Lorna Smith, Fred Koontz, Molly Linville, Donald McIsaac, and Kim Thorburn, in their official capacities as Commissioners of the Washington Fish and Wildlife Commission (collectively, “WDFW”);

WHEREAS, the notice letter and complaint allege that WDFW is in violation section 9 of the Endangered Species Act (“ESA”), 16 U.S.C. § 1538, by causing unauthorized “take” of

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1 protected species through the operations of a new integrated summer steelhead hatchery program
2 on the South Fork of the Skykomish River in Snohomish County, Washington;

3 WHEREAS, WDFW submitted a hatchery and genetic management plan (“HGMP”) to
4 the National Marine Fisheries Service (“NMFS”) dated April 12, 2019 seeking authorization
5 from NMFS to take ESA-listed species through operations of the integrated summer steelhead
6 hatchery program on the South Fork of the Skykomish River;

7
8 WHEREAS, NMFS issued a Proposed Evaluation and Pending Determination to approve
9 the HGMP dated December 21, 2020 and NMFS issued a draft Environmental Assessment under
10 the National Environmental Policy Act for the pending determination dated January 20, 2021;

11
12 WHEREAS, WDFW anticipates that NMFS and the United States Fish and Wildlife
13 Service (“FWS”) will issue final decisions on whether to provide ESA authorizations for the new
14 integrated summer steelhead hatchery program on the South Fork of the Skykomish River in the
15 next several months;

16
17 WHEREAS, the Conservancy and WDFW (collectively, the “Parties”) seek to conserve
18 the Parties’ and the Court’s resources pending final determinations from NMFS and FWS;

19 WHEREAS, WDFW denies the allegations in the notice letter and complaint and
20 specifically denies that there has been unauthorized take of ESA-listed species;

21
22 WHEREAS, the Parties reserve all claims, defenses, arguments, and issues with respect
23 to any request by the Conservancy for an award of litigation expenses, including attorneys’ fees,
24 including those related to the effect of this Stipulation and Order on such a request;

25 The signatories for the Parties certify that they are authorized by the party they represent
26 to enter into these Stipulations and Order;


27
28 WILD FISH CONSERVANCY

WASHINGTON DEPARTMENT OF FISH &
WILDLIFE, et al.

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1 
2 By: s/ _____
3 Kurt Beardslee, Executive Director

By: s/ 
Kelly Susewind, Director

4 KAMPMEIER & KNUTSEN, PLLC

OFFICE OF THE ATTORNEY GENERAL
STATE OF WASHINGTON

5
6 
7 By: s/ _____
8 Brian A. Knutsen, WSBA No. 38806
Attorney for the Conservancy

By: s/ 
Michael S. Grossman, WSBA No. 15293
Attorney for WDFW

9
10 STIPULATION AND ORDER

11 1. The Parties stipulate that, for purposes of this Stipulation and Order, the Court has
12 jurisdiction over the Parties;

13
14 2. Until such time as NMFS and FWS both provide exemptions for liability under
15 section 9 of the ESA, 16 U.S.C. § 1538 (or other authorization to take ESA-listed species) for the
16 integrated summer steelhead hatchery program on the South Fork of the Skykomish River
17 described in WDFW's April 12, 2019 HGMP (the "Hatchery Program"), or for the specific
18 action of the Hatchery Program to be taken, WDFW shall not:

19
20 a. Collect, trap, or otherwise remove steelhead from the South Fork
21 Skykomish River or any other water body in Washington State to supply broodstock for the
22 Hatchery Program; and

23
24 b. Release any steelhead that were produced through the Hatchery Program
25 into the South Fork Skykomish River or any other water body in Washington State from which
26 the steelhead could potentially migrate to Puget Sound, including the Strait of Juan de Fuca;

27 3. WDFW may release steelhead produced through the Hatchery Program prior to
28 both NMFS and FWS providing exemptions for liability under section 9 of the ESA, 16 U.S.C. §

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1 1538, if the fish are released into water bodies from which they cannot migrate to Puget Sound,
2 including the Strait of Juan de Fuca. WDFW shall provide the Conservancy with fourteen (14)
3 days' advanced written notice of WDFW's intent to make such a release, including: (a) the
4 number of hatchery fish to be released; (b) the name of the water body in which the hatchery fish
5 are to be released; (c) the location of the water body into which the hatchery fish are to be
6 released; (d) evidence (e.g., maps and/or field data) demonstrating that the release location is free
7 from any migratory pathway to Puget Sound, including the Strait of Juan de Fuca; and (e) the
8 date on which the release is to begin.;

9
10 4. WDFW shall provide the Conservancy with copies of NMFS's and FWS's
11 decisions on whether to provide exemptions for liability under section 9 of the ESA, 16 U.S.C. §
12 1538, for the Hatchery Program as soon as practicable and no later than three (3) days from
13 WDFW's receipt of each decision;

14
15 5. This matter shall be stayed until such time as WDFW has received exemptions
16 from liability under section 9 of the ESA, 16 U.S.C. § 1538, from NMFS and FWS to implement
17 one or more of the Hatchery Program actions identified in subparagraphs 2.a and 2.b above or
18 until December 31, 2021, whichever occurs first. WDFW shall notify the Conservancy that it has
19 received such exemptions to implement one or more of the Hatchery Program actions within
20 three (3) business days of issuance and no later than WDFW's implementation of the action for
21 which it has received the necessary exemptions;

22
23 6. The Conservancy shall not file a motion or take any other any action in this
24 litigation seeking interim injunctive relief against an action identified in subparagraph 2.a or 2.b
25 above so long as that action remains prohibited by paragraph 2 above, except as may be
26 necessary to enforce the terms of this Stipulation and Order; and
27
28

8. This action shall be stayed and removed from this Court's active caseload until further application by the parties or order of this Court.

Mr S Casnik

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